

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, and 205 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, and 7652, of said Code, proposes to amend sections 1.17, 1.59, 27.60, 27.90, 28.59, 159, and 195, and add sections 1.46, 28.38, 28.41, and 28.42, Title 14, California Code of Regulations, relating to Albacore and Bluefin Tuna Bag Limits.

Informative Digest/Policy Statement Overview

1. Establish a 10-Fish Daily Bag Limit South of Point Conception and a 25-Fish Daily Bag Limit North of Point Conception for Albacore in State Waters for Consistency with New Federal Regulations; Establish a 10-Fish Daily Bag Limit for Bluefin Tuna in State Waters for Consistency with New Federal Regulations

The proposed regulations would establish daily bag limits for albacore and bluefin tuna caught in California's jurisdictional waters (generally 0 to 3 nautical miles offshore) between the US-Mexico and the California-Oregon borders.

The purpose of the proposed action is to conform California's ocean sport fish regulations to new federal NOAA Fisheries regulations for two federally-managed highly migratory species, North Pacific albacore (*Thunnus alalunga*) and northern bluefin tuna (*Thunnus orientalis*). Both species are targeted by recreational anglers in ocean waters adjacent to the State of California. The federal regulations, recommended by the Pacific Fishery Management Council (PFMC), will apply to federal waters outside but adjacent to California waters, generally between 3 and 200 miles offshore. They are expected to become effective in the fall of 2007.

Currently, recreational anglers fishing off California are not limited in their take of albacore and bluefin tuna, as they are included in the list of species in Section 27.60, Title 14, CCR, for which there is no daily bag limit.

The new federal regulations will include a differential bag limit for albacore caught in federal waters north and south of Point Conception. The daily limit for albacore will be 25 fish north of Point Conception and 10 fish south of Point Conception. This regional approach to bag limits was established in order to account for different fishing strategies for this species in northern versus southern California waters. Additionally, a bag limit of 10 fish for bluefin tuna will apply in all federal waters off California. The proposed conforming regulations for state waters, which would be established in new Section 28.38, Title 14, CCR, would mirror these new federal regulations.

The new bag limits were approved by the PFMC consistent with guidance provided by the Inter-American Tropical Tuna Commission's (IATTC) 2005 Resolution C-05-02 on North Pacific Albacore, and the 2004 Recommendation for Northern Bluefin Tuna in the North Pacific Ocean by the International Scientific Committee (ISC) for Tuna and Tuna-Like Species. The bag limits are considered a conservation measure aimed at preventing increases to current fishing mortality levels for these species.

The best scientific evidence for albacore and bluefin tuna from the IATTC and the ISC indicates both species are either fully exploited, or may be experiencing fishing mortality above levels that are sustainable in the long term. Given there is presently no limit on the take of albacore and bluefin in California's recreational fishery, there is a possibility

that current fishing mortality may increase above present levels. Therefore, the proposed regulatory changes are likely to assist in achieving the management goals of the federal fishery management plan for US West Coast Fisheries for Highly Migratory Species, and are necessary for the sustainable management of these important recreationally and commercially harvested tuna species.

Unlike most bag limit regulations established by the Commission for ocean waters, under the proposed regulations albacore and bluefin tuna taken by recreational anglers in California would not apply toward the general 20-fish bag limit established in Section 27.60, Title 14, CCR. Therefore, in waters south of Point Conception, anglers would be authorized to take 10 albacore, 10 bluefin, and 20 other finfish in combination not to exceed 10 of any one species per day, unless otherwise specified. North of Point Conception, anglers would be authorized to take 25 albacore, 10 bluefin, and 20 other finfish in combination not to exceed 10 of any one species per day, unless otherwise specified.

2. Technical, Organizational and Clarifying Changes to Regulations in Subdivision 1 of Title 14, Regarding Existing Daily Bag Limits

Organizational changes affecting several sections of Title 14 regulations are proposed to improve clarity and enforceability. The modifications follow from public and Department-initiated comments on the complexity of the ocean sport fishing regulations.

Section 27.60 currently prescribes both general and special bag limits for all species taken in ocean waters. Meanwhile, many other species-specific sections in Chapter 4, Subdivision 1, of Title 14 also list the special bag limits for individual species or groups of fish. It is unnecessarily duplicative to specify the special bag limits both in Section 27.60 and elsewhere. The proposed changes would move these special limits into other sections if necessary, and allow the general bag limit of 20 fish to stand alone in Section 27.60.

All but five of the species currently enumerated in Section 27.60 have their respective special bag limits specified elsewhere in this Chapter. The five species are: sixgill shark, sevengill shark, shortfin mako shark, thresher shark, and blue shark. The proposed changes would move these special limits into new Section 28.41 (sixgill and sevengill shark, where the limit is one) and Section 28.42 (blue, thresher, and shortfin mako shark, where the limit is two). Although Sections 28.41 and 28.42 would become new sections of Title 14, the substance of the regulations themselves would remain unchanged. It is anticipated that this reorganization will make the special bag limits for these species easier for anglers to locate.

Resulting from the proposed new bag limits for albacore and bluefin tuna as described in item 1 above, a new Section (28.38) is proposed for addition to Title 14, which will specify (and therefore clarify) the daily bag limits that apply to all varieties of tuna. Presently, there is no specific mention of yellowfin tuna or bigeye tuna anywhere in regulations of Title 14 because the general bag limit applies to these species. Additionally, there is no limit on skipjack tuna. Because the regulations will differ considerably depending on the species of tuna, possibly causing confusion for anglers, the Department believes the proposed new Section will improve clarity regarding what bag limit applies for each species. However, other than for albacore and bluefin tuna, no substantive changes to bag limits are proposed in the course of this proposed reorganization.

Additionally, under the current regulatory organization there is a need to amend Section 27.60 every time a special bag limit is changed. As a result, this Section is routinely amended. Moreover, the frequency of special bag limit changes has increased in recent years. These recurring amendments to Section 27.60 have resulted in confusion and difficulty tracking the often-competing rulemaking files, which increases the potential for error.

The proposed changes to the organization of Section 27.60 and elimination of the special bag limits described above results in the need to amend references to Section 27.60 in several other sections of Title 14. That is the basis for the amendments proposed herein to Sections 1.17, 1.59, 27.90, 28.59, and Section 195. Minor clarifying and technical changes to the remaining regulatory text of Section 27.60 are proposed as well.

3. Establish a general definition of “finfish” by adding Section 1.46; for clarity and enforceability

The Department proposes adding Section 1.46 to provide a general definition of “finfish” in order to improve clarity and enforceability. While the term “finfish” is referenced in various places throughout Title 14, there is currently no definition of finfish which applies generally. There is a specific definition of finfish provided in Section 159, however, that definition is intended to apply only to commercial fishing for coastal pelagic species, and should not be applied generally.

The proposed general definition to be added in Section 1.46 is consistent with the common practice of both anglers and Department enforcement staff, namely, that “finfish” mean what the term implies, but does not include invertebrates. Finfish would be defined in new Section 1.46 as any species of bony fish or cartilaginous fish (sharks, skates and rays), and would exclude amphibians, invertebrates, plants or algae. This definition would apply both in ocean and inland waters of California.

Proposed amendments to Section 159 would clarify that the finfish definition in that Section should not be applied generally.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Bridgeport Memorial Hall, 75 North School Streets, Bridgeport, California on Friday, July 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the County Administration Building, Board of Supervisors Hearing Room, 105 East Anapamu Street, 4th Floor, Santa Barbara, California on Friday, August 10, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 3, 2007, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 6, 2007. All comments must be received no later than August 10, 2007, at the hearing in Santa Barbara, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency

representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Marci Yaremko, Marine Region, phone (805) 568-1220, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

An analysis of the albacore taken by recreational anglers from 1997 to 2003 (See: *PfMC Decision Support Document, November 2006. Agenda Item C.2.a., Attachment 2. Implement Daily Bag Limits for North Pacific Albacore and Northern Bluefin Tuna Caught by Recreational Anglers in Federal Exclusive Economic Zone Waters Adjacent to California*) indicates the proposed bag limits for albacore would accommodate what is already taking place in the fishery: 99 percent of anglers land between 1 to 10 fish per day when fishing south of Point Conception and between 1 to 12 fish per day when fishing north of Point Conception. Therefore, it is anticipated that the proposed action would not have a significant regional or statewide adverse economic impact on small business, including the ability of California businesses to compete with businesses in other states. However, the Department acknowledges there could be nominal impacts to commercial passenger fishing vessels, tackle retailers, and private boat owners from any constraint on catches that cannot be quantified.

An analysis of the bluefin tuna taken by California recreational anglers from 1998 to 2002 suggests anglers retain five or less bluefin tuna per day. Therefore, implementation of a daily bag limit of ten bluefin tuna is similarly expected to accommodate current fishing practices, and is not anticipated to have a significant statewide adverse economic impact on small business, including the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 12, 2007

John Carlson, Jr.
Executive Director